

Town of Milton
Special Town Council Meeting Minutes
Milton Theatre, 110 Union Street
February 24, 2007

Meeting Called to order at 2:00pm

Members Present: Councilwoman Melson
Councilwoman Betts
Councilman Frey
Councilman Harris
Councilman Prettyman
Councilman Dvornick
Mayor Post

MAYOR POST: This meeting will consist of three presentations, a public hearing, and the Resolution to contract approval.

GEORGE DICKERSON: Gave a PowerPoint presentation on the History of the wastewater plant.

JERRY ESPOSITO (President of Tidewater Utilities, Inc.): "I am going to ask my Tidewater team who's here just to make sure they identify themselves and we are going to answer questions you might have later." Dan String – Greenstone Engineering; Kirsten Higgins – Director of Water Planning and Development for Tidewater Utilities; Bruce Jones – Greenstone Engineering; Ray Able – Director of Planning and Development for the Waste Water side of Tidewater; Bruce Patrick – VP of Engineering with Tidewater Utilities and Tidewater Environmental Svcs.; and Carol Murphy – Manager for Tidewater. "First of all, we are offering a package to the Town that gives a maximum amount of flexibility. You saw the one slide about the one type of discharge, we listed a bunch of different discharges but we are talking about stream discharge which in the future can also go to land application. We can expand the Waste Water Treatment Plant in our proposal and we have various ways to treat the waste and dispose of the waste through our package that will be built over time. We can size the plant as needed so we don't have to build it all at once. We can size it as customers come in. We are going to spend the next four months, should we move forward today, making sure we know those schedules you saw from the various developers/developments in the area. We are going to try and nail down the exact plans from all of those and others, so when expansion occurs, we can do a lot of things in a flexible way with the design we have. We think that having the flexibility and stream discharge also allows that kind of flexibility so we don't have to commit to building a large facility and we'll have plenty of time when we can expand, we'll do so. It will be driven by the demand and we'll have that kind of flexibility. We know what kind of treatment plant we are going to build will allow us to continue to discharge into the stream and meet all the environmental standards that are required now and in the future." Gave a PowerPoint presentation on Tidewater.

GEORGE DICKERSON: Gave a PowerPoint presentation on the proposed contract for Tidewater.

Mayor Post opened the Public Hearing at 3:01pm

Jennifer Lindsey, Sussex Acres, Headwaters of the Broadkill: My question is to Tidewater about Flood water and Flood water contingency plans. What are your plans in regards to flooding and if there is a contingency plan in place? Bruce Jones, Greenstone Eng.: The existing treatment facility is located in the flood plain.

There is right now no contingency plan for that. The new facility will not be in the flood plain so a contingency will not be required.

Bob Blaney, 210 Chandler Street: The first issue is I spoke with Mr. Esposito along with then engineers from Artesian and they both said the impact fee for the EDU of non-connected lots/parcels would be substantially less than \$8000 as was proposed and passed by the Town Council. On page 13 of the TESI report, they are recommending \$7952.81, which is barely below \$8000 if the developers paid within 6 months of the due-diligence period set for the herein. The second issue is the period for the impact fees does not address persons/people that own parcels/lots in town Milton today but do not have an EDU or sewer hookup. Is there going to be a rate of impact fees for current owners of parcels of land in the Town of Milton less than the \$7952.81? Mayor Post: Jerry, you may want to address this, and I know this has been an issue and we voted on the impact fees, it's been quite a long time ago. I do know that Tidewater has done major cost analysis on their formula and the key was to focus on the citizens of this town and the current users to keep the rates at an affordable rate and at the same time impact fees that are compatible. In Middletown for example, and I've stated many times, they've addressed their situation. I think, currently, their impact fee might be \$12,000 now because they have a rate structure for the next 20 years that it goes up either 7 or 10% annually to offset costs. I also want to say that even as our impact fees were implemented previously at \$8000/unit, it did include infill development. So that was the impact of any new user coming on to the town of Milton because an empty with a house on it does make an impact. Now if it were an existing home, even if it sat empty, or a business, then it was calculated different because it already had been accounted for for that EDU impact in the prior years. But I will go ahead and also let Mr. Esposito go ahead and address this. Jerry Esposito: Thank you, Mayor. Those are good questions, and I think the Mayor is right that we tried to mitigate the rate risks by talking about a due-diligence period to make sure we can nail down the schedule but while \$7900 is just below \$8000, the impact fee is paying for all of what you saw on the chart. The ultimate goal was to keep the user fee stable for the towns' residence. We negotiated a five year term and to minimize the increase over time and to have no impact fee on existing users. So when you do those two things, that's the calculation that came out with. If any of that changes, the numbers can change. When I told you what the principles were that we were trying to achieve, that's drove the numbers where they did. I think the Mayor has addressed the in-town limits but no ED. My understanding is that there are just a handful of those anyway, but we've included those calculations in these numbers, so everything that we are aware of that we got from the town is included in the calculations in our model.

Lynn Ecklund, 406 Union Street: I want to go back to the first bullet on Page 14 that Mr. Dickerson sort of speed-read to us where it said that "TESI will attempt to sign up as many new customers as possible during the due-diligence period, 4 months, it is realized that a certain number of new customers are needed to economically build a new waste water treatment facility. If the threshold of new customers necessary is not reached, and therefore the new plant cannot be built economically, TESI will continue to operate the existing plant and perform any modifications for compliance until such time that enough customers have signed up to allow a new plant to be built economically". My question is, we have 1144 now. What is the number of new customers we are seeking to reach to achieve that threshold? Jerry: The number is not an easy number to pick because it is based on the timing of when it comes online. There is a threshold but it is also driven by the size of the plant. We can make the threshold easier to reach if we downsize the plant to 400,000 gallons. Lynn Ecklund: Let's talk about the plant in this contract. You are looking for a certain number of customers above the 1144 to achieve your threshold to build the plant economically. What is that threshold? Mayor Post: Please, just let me supercede. There were specific numbers that were provided during this contract negotiation, which also include numbers from pre-sold EDU's that we have memorandum of understandings with, with 6 parcels currently in town. First of all they will be very good negotiable memorandum of understandings for Tidewater. For one thing, it's because as we well know, in 2004, to show an extreme urgency of this sewer

plant, the town took action to sell all of the sewer rights to the Town of Milton except possibly only 75 or 100 more hook-ups. But since then, the majority of those speculated EDU purchases were re-sold, because obviously there was a security structure that we all know, with banking we need to have sewer rights before we could get a bank loan. So, by structuring these Memorandum of Understandings which will be honored by Tidewater, that's part of them. Also, we are talking about the Robino project already approved on Lavinia Street; the Dr. White parcel, which has been brought in, that's another parcel that was in the formula; Mr. Carey by the school which is an existing parcel that has already brought into the Town of Milton; there's also several smaller projects that were very well up like Meriwether and so forth. So, obviously, during this due-diligence period and we could either one at the four months, possibly walk away from this if they came in and said they wanted to raise these user rates, because again, this is a partnership. And partnerships have to protect on another. Why they are doing this is just a security measure, because they want to make sure that these parcels can be negotiated. Now how I look at that they can very well be negotiated, because they all expire 2009/2010. But all of them, if not built in within that time period, forfeit the dollars they've paid for their EDU's. So, I think there is a lot of due-diligence on these developers' part to work with the Tidewater in the direction we are going now. If Mr. Esposito would like to add that, but there were specific figures given...numbers. Jerry Esposito: I can give you an estimate. I think I understood your question and I think the number is about 1500 is what we are going to try to get over the next 4 months. In fact, 1500 is actually less than that total, so we think we can make this work even if we get less than what we've calculated is the demand for it, so we are going to get to that threshold, when we get to about 1500, we can pull the trigger and say lets go forward, we have enough. Lynn Ecklund: So if at the end of the 4 month due-diligence period you have not signed up the approximately 1500 people, you will continue to operate the Towns' plant while you are seeking to bring these new customers on board to achieve that threshold and it's only when you achieve that threshold that Phase I is going to be done. Jerry Esposito: Or, let me say this, because I don't want to complicate you, but you asked me what those numbers are based on if we built the 800,000 gallon/day plant. So that's the 1500. If we get 1200, we can decide to build a smaller plant. So we have various options after 4 months. And we can help make that decision because one of the parts of the due-diligence, we're going to go to DNREC and ask them how much longer can we operate the facility and not be in non-compliance. We think we know the number; we think we can put in about 500 more homes. We are prepared to do whatever significant upgrade to the plant might be needed. Just minor upgrades we've included. So the best answer that I can give you is 1500 as the minimum threshold. Bruce Patrick (VP of Engineering): The 1500 is sort of a mixed bag out of the ones that are allocated with EDU agreements, but 80 or 90 fully paid and 350 or so that have paid partially. So it includes those 350 that have partially paid because they would pay the balance from what they paid, the \$2500 to the new impact fee, so yes, the majority of them are included, except the ones who are already fully paid and they are not included. Mayor Post: There are several parcels that we do not have Memorandum of Understandings with, such as Mr. Carey's, the Dr. White parcel. Another thing added would have been Phase II of the Preserve on the Broadkill as well, and then there are some small ones too. I think we even put in some possibilities that have come in front of us or have showed interest of coming such as the Marina project, so there's numerous ones to help calculate that but its reality, it's not hypothetical which some people use numbers on. We are trying to use real hard numbers. It is fine, anybody can come in front us and say we are development and we are going to bring 300 houses in year every year. Well good luck, because what we are trying use is real figures. And I think that's how we've come up with the real amounts, especially as it relates to impact fees.

Jim Welu, East Mill Run: First, are all the impact fees collected by the Town going to Tidewater or only the amount that is still remaining? Mayor Post: All the collected impact fees will be transferred over, and that was shown in the contract at \$2.4 some million and there was some additional uncollected of \$3 million, but all impact fees will be transferred over. Mr. Welu: I wonder if someone can give a better explanation of the difference between the growth area and the expansion area that's in your definitions. Mayor Post: That's a great question. What Tidewater has been willing to do all along is to protect our growth area, so that means that

the CPCN's that are assigned surrounding Milton and the town municipality, and that's what creates the growth area, so everything you see in the comprehensive plan is the Town of Milton's growth area and not only that, through this contract whether it's annexed or not annexed, the Town will receive \$1500 per unit. So that's a revenue builder for the Town of Milton which has been a very big thing for me over the last couple years to try to get financial security for this Town. Mr. Welu: And the expansion area? Mayor Post: It's all one and the same. Our expansion area would be our growth area. The definition for both is in the contract and listed as Exhibit A. But what we have in this contract is a commitment of Tidewater that will protect us in our growth area. Maybe the terminology is the same but then it's defined, but that is why we put the definition in here to clarify it. Mr. Esposito: The growth area is the comprehensive plan growth area and the expansion area beyond the comprehensive plan area. Mr. Welu: You talked about if you don't reach the number of required new customers, they would have to do substantial improvement to the current plant and that would be paid by impact fees or increase user rates. And I would like to see it sometime what those proposed new user rate increases might be. Mayor Post: You would see that within the end of the 4-month due-diligence clause and we have fought with Tidewater to keep those costs down. Mr. Welu: One other issue that was raised very late in the contract is the Town is going to annexing the 20 acres and selling 18 of that to Tidewater and the question is what if the annexation does not take place, what are the options for Tidewater, what are the options for the future of a development of a sewer treatment plant? Mayor Post: That is the 4-month due-diligence clause. That will be the Towns' responsibility to secure within that 4-month period the land for Tidewater. What would happen? I would assume Tidewater would then have to purchase land elsewhere and then we would remove the amount allocated from the contract. Mr. Esposito: What the Mayor said is true. There is a clause in there that was probably not clearly highlighted, when you went through it, that says "If there is no 18 acres, the terms will have to change", but in the meantime we've budgeted for the amount to buy the land. We believe with that kind of money we can get land elsewhere to build another kind of treatment facility nearby, so we are not worried about it. What the Town is worried about is lost revenue. Mr. Welu: One final comment if I may. This is such an important project for this town. And for the citizens to see a contract up on a screen, which is barely readable and have 3 minutes then to comment on before you take a vote, is irresponsible.

John Vogel, Preserve on the Broadkill: Basically I have a real problem in my gut with our classification after entering into a contract with the sewer with the impact fee which I believe at the initial time was \$1250, and then it was increased before we even closed, to \$2500 which was acceptable. I would certainly say that an increase of \$1250 was not a big thing. Well right now we are talking about \$8000. This coupled with other fee increases it changes the economics of what we envisioned of moving down to the town. I just want to go on record because we paid a contract amount; admittedly there were provisions in there that said the town could increase it and I'm not contesting that at all. But at the same time, since we have purchased the property, we have been paying taxes to the Town of Milton. We have been paying taxes not at the same level with the residences but our load on the town's infrastructure is certainly less and I believe that should be taken into consideration. Thank you for your time. Mayor Post: And thank you and I agree with you and I understand where you are coming from. Back in 2004 when the Memorandum of Understanding's were signed we weren't faced with the reality of building the sewer plant. There's been a lot of talk, since about 2002, but nobody took the next step. The numbers speak for themselves; the calculation makes it speak for itself on how things work or won't work and I want to say that if I were the one signing those MOU's, if I were on the developers side, I would have never signed them, because it did put a lot of liability on them, but they wanted them to possibly make their business deals. They purchased them and they signed in their agreements. They also signed that they must use those within a certain amount of time which I would probably never had done either, because how the economy has turned on the housing market right now. We want to keep these impact fees as reasonable as possible and we also want to protect the citizens of this town, and I do understand, but its like being in a rock and a hard place and that's where we are today. Mr. Vogel: Last comment, it doesn't help me out, admittedly, and I have a biased side. There should be some consideration given to the fact that we

purchased these agreements a while back. We are not the same as someone purchasing it next month, which would all be the same fee. Maybe mid road. Mayor Post: That is something that will come in play when they start discussion. I think that is part of their negotiation responsibility, and that may happen. But that's something they are going to have to work on, and I certainly hope, and I think they will, try to be as reasonable as they can, but the number have to work. If they don't work, we will really see problems down the road. Mr. Esposito: Just to validate what you said, everything is negotiable. You have an investment. We've calculated that you're down payment, if you want to call it, is part of our proforma. We don't want to see you lose that. It will be our job to negotiate this new agreement with you, not the towns, because we are going to take that over, so when we do the numbers and we can make it work, we will. We don't want you to lose your down payment.

Lynn Celia, Broadkill: I am a business owner in the Town of Milton and also hopefully will have another development project, one that Mr. Mayor brought up, the Milton Marina project, which unfortunately has been on hold for over a year waiting for EDU's. So, before I ask my question, I would like commend the Council and thank you very much for giving us this opportunity today and for giving us this contract; finally we have a solution and I know there are lots of things to iron out and certainly not everybody's going to be happy, but as a member of this community, we have a failing sewer plant in a town that is rapidly growing. And at the end of the day we needed a solution, and I only wish we had thought of this wonderful idea of privatization several years ago, but thank you for us being here today, because we are finally looking at a solution. With that, a lot of questions are revolving around when you analyze a contract of this magnitude, it really comes down to risk and I think that a lot of questions have come up about the due-diligence period, and it's very important that we understand that we will have a new sewer plant in 18-24 months from 4 months from now, correct? We will technically break ground so to speak. So the real pivotal thing for everybody to understand is what transpires in those 4 months that could change that future, because people like me are trying to make business decisions real time. We have the pre-sold EDU's, and we are looking for 50, but wanted to buy 25 but they weren't available, so I've been on hold for a year. Maybe this is a question for TESI, but up there we said we had 20 EDU's on paper available. Now, I may not be the only example of this in the audience today, but at the end of the 4 months can I step up and purchase 23 EDU's, or can anybody. That's a question for anybody. I'd like to ask that within the context of the scenario that if you have the 1500, yeah sure. And then if you don't have the 1500 but then there's another variable to that. You have the 1500, but I need to hook up before the new sewer plant. Mr. Esposito: It's a great question, and I think we anticipated that and maybe it's not clear and Bruce is going to help me, because we've had this discussion already with DNREC. If everything went swimmingly, it will be our plant to own and we'll have the old treatment, and we'll be operating it within the confines of limits that DNREC will establish, and we think within those confines we will allow new hook-ups to come in that will be our negotiation, not the towns anymore, but the bottom line is we have to make sure that DNREC is okay with those additional users. Mr. Patrick: I've talked to DNREC and I think the town has a policy now that on paper they're allocated however in reality you have 180,000 gallons/day worth of capacity, which at a 10% growth rate will carry you 6 or 7 years. That is not the plan to use the plant for 6 or 7 years, but that clearly demonstrates that you can allow the additional EDU's to come online as we are planning, designing and building the new plant. I talked with DNREC about it and they do not look at the paper allocations, they look at the true flows that coming into the plant and it is fine. Mr. Esposito: Back to my point, the rub will be that everyone isn't like this lady and want it all, so that we give up more than what we have. So part of our 4 months is to make sure we get real demands that are real now and can't wait 2 years for the new plant. That is going to be our job. Ms. Celia: I'm not sure he answered my question. At the end of 4 months, will I be able to get my EDU's. I guess the answer is "I don't know"? Mr. Esposito: That's the answer. But, at the end of the 4 months, we will know how many users we will have and whether or not the plant can take your extra 23 or 46 or whatever, we will know that at the end of the 4 months. I think we'll say yes, but I don't have the authority to say yes right now. Ms. Celia: It goes back to the pre-sold EDU's. There is capacity in the existing plant; we just can't get to it because it's committed already. So as long as you correct the violations which perhaps don't

have anything to do with capacity, but it's not the capacity, it's other issues why it keeps violating. So, therefore, there is capacity and as long as you can manage the reason it's failing, which is not capacity so to speak, then technically I should be able to get EDU's or anybody else. So then the question becomes, how confident are you that you can fix those DNREC problems in our existing plant? Worst case scenario, the new plant gets delayed for any reason, say it's three years from now. Our risk is in that interim. How confident that you can accommodate the next 3 years of growth with the existing plant and the DNREC violations? Mr. Patrick: I'm pretty comfortable. We've talked to DNREC and going back to some other questions that tie directly in. We have the 4 month period which I'll see we take inventory of what's out there to see what's coming in to say what we are going to build, whether it's 400,000 or 800,000. We've already taken that inventory to a degree and feel pretty comfortable. That is how we came out with the 800,000 gallon/day plant. So we are pretty comfortable that will be our position at the end of the due-diligence period. I think, and I would like actually, we would want people to come to us in multiple capacity because that helps with that inventory. We feel pretty comfortable with the interim as long as we know that the additional plant is coming. In addition, we also have other contingency plans that Jerry alluded to. I'll call them portable skid systems; we've actually looked at membrane systems that we could bring in, in the interim to help out with your capacity issues in the event it's a three year period instead of a 24 month period. And those portable skid systems could be used elsewhere. Mayor Post: If we could move this forward depending upon how the future contract signing would go or approve, that's something where you two need to start communicating very quickly.

John Collier, 301 Coulter Street: Just a couple of points for the Council to consider. I believe that what I saw on the screen was that we're going to grant a franchise to Tidewater for the current area; as far as Milton grows they have a franchise. In Article 17, of the Town Charter, it authorizes you the ability to grant franchises for sewers and other utilities, but further states "no exclusive franchise or license shall be granted for any such purpose with any firm, association or corporation whatsoever". I would like you to take that into consideration when you work on this contract. Mayor Post: We are working on the Charter at the same time right now, too. Mr. Collier: I understand but until such time that that's changed, this is what binds. Further, in the Town Code, Section 19-20 of the Town Code, prohibits private sewers and requires all discharge of waste to be the community sewer. Section 19-2, paragraph 9, the Code states "community sewer shall mean a sewer owned and operated by the Mayor and Council of Milton, tributary to a waste water treatment facility operated by the Mayor and Council of Milton". How can we sell our system to a private firm in violation of our own Code. George Dickerson: The Charter supercedes the Ordinance. And in doing so, the issue of the Charter allows the Mayor and Council to enter into private negotiations with regard to any private waste water or water entity as far as that goes. And that's up to interpretation. I disagree with your, without reading in context of what you are saying. Mayor Post: And we will submit that to our legal advisor. And the good thing is we are right in the middle of major Charter revisions.

Shawna Thompson, Island Farm & Alfa Farms: My question concerns the handling of what you consider your growth area and expansion area. If I understood correctly you intend to require those areas to be annexed into the city and as I understand it annexation is a voluntary process that we have to request annexation? George Dickerson: Your property cannot be annexed into the town without your permission. Mayor Post: But when it is considered it will be considered as the first option to come to the Town of Milton. In other words, if Tidewater is negotiating with you, they would ask you if you would be interested in annexing into the Town of Milton and that's where that part comes into it. Mr. Dickerson: Your property is not in the growth area and our comprehensive plan would have to be amended to take that in. If in fact that were true, if you wanted to be annexed you would still have to make the request. But the negotiation with Tidewater and yourself should you choose to have waste water service on your property, that's between you and them. But they are going to ask you. And because it's your property, you can negotiate with them if you choose to.

Mr. Esposito: If the property becomes contiguous, they have to annex into the town as the contract says. Until it is though, it can still be served. We are being the agent for the town to get your annexation into the town.

Mayor Post: For anybody Tidewater is negotiating deals with that would require them to first come to town as consideration for annexation. It's with our contractor not with the property owner. The property owner...they can do what they want. Shawna Thompson: You are saying two different things. You are saying that annexation is voluntary and then you are saying that we would be required to annex, under certain conditions there. And that's saying two different things. Annexation by state law is voluntary. You can't require us to annex. It's a violation of the state law. Mr. Patrick: It might be the word needs to be changed from require to that they may. I can that someone might want to still buy utility from us but not be in the town limits. So that might be something that needs clarification on the wording.

Bill Bell, 422 Chestnut Street: I guess we all see different things when we look at a document of this size. My question here is from page 4, and it talks about the existing sewage treatment system and the property that it is on and I think it sounds like a very nice gift that the town will receive the property back. However, it also says that "TESI will not assume responsibility should pre-existing environmental conditions be found that would add to cost and I would suggest, and I don't know anything about waste water treatment, but they've been doing it there for 40 years and there are probably pre-existing conditions. And have we thought about, or anybody brought up, what will be the remediation cost be to the property owner, which according to this I think is going to be the Town. Mayor Post: That is an issue and what that clause is to release them, because they are doing us a favor and the estimated cost of in-kind contribution again, because we are talking way above \$6.4 million that we are receiving. Probably about an \$800,000 estimate for demolishing that plant, but they didn't feel they were responsible if any environment issues were on that property. They are to turn over to us a cleared off property. If there are environment issues, that's on us. And we know that.

Carol Bruce, Collins Street: I just want to say that I've been really uncomfortable here today which surprised me. I came to learn and I've learned a lot. I don't like coming to meetings where there is a lot of snickering and negativity. I thought everyone was coming to learn and apparently I was mistaken. I think that when we first moved here 5 years ago, I was astounded the previous administration had done nothing as far as I could tell about getting a new sewer. When the current sewer was obviously horribly outdated, inadequate, polluting the river, etc. and I have to say that this administration seems to me has done more in a year about that problem than what had been in the 10 or more years before that. I did want to say that I think you all have been very brave to take this on, to have done so much more work and I only know very little about what has been done, but nobody can do a job if people are just on them all the time, quibbling negativity, that's no atmosphere to actually get something done. Mayor Post: I think we have gotten something done in spite of all the quibbling.

Councilman Prettyman: I would like to make a comment on what you've said. I've been a part of the Planning & Zoning and part of the Sewer committee, and we have been working on water and sewer to get a plant up and running. We have been working on it for more years than you have probably been here, and we have been trying and we have met for several years and every time we bring something to the public they don't want this or that. I am just proud that we are this place today and that we have come to conclusion where we are prioritize and we are going to move forward.

Charles Jones, Morris Avenue: I have two questions. The first is in regards to the annexation issue. My family has land on Lavina Street which is surrounded by town property and I do attend the Broadkill Tributary Action Team meetings and I see what DNREC is doing close up. I see that they're pretty much zoning in on private residential sewer systems and that in the long haul they are going to try and do away with them. That's pretty much what we are looking at down the road, and if DNREC were to tell my family that lands on Lavina Street had to be tied in to a public sewer system, and Tidewater were the people in the area, and we began

negotiating with them about sewer, does that mean those lands on Lavina Steet would necessarily have to be annexed into town? If we needed the sewer, would we have to annex into the town if we didn't want to? Mayor Post: No Mr. Jones: Good, that's what I wanted to hear. The second question I had was, we discussed a proposed expansion area for the sewer district and I was just wondering if this comes into play with the North Milton area? Does this include that area? Mayor Post: Years ago, within the last comprehensive plan somehow, they had the insight to draw the borders of northern part of Milton to encompass the exact orders of North Milton. I do say that yes, North Milton is in our growth zone, but this goes further to CPCN issues. Let me put it this way, because this could eventually get into a litigation issue, so I don't want to go far. It is up with the Public Service Commission right now, and we say that yes, this municipality owns the rights to the CPCN's in our growth zone for waste water, not water, and we will do whatever it takes to protect them.

DJ Hughes, 403 Mainsail Lane: Do you intend to vote today to approve this contract subject to the due-diligence period? Mayor Post: Well, that is Item 7 on the Agenda. Our attorney is not but he has reviewed the contract, made changes and he also said that we can move forward. He also wanted to say to the people that this is a terrific contract for the people of Milton. Mr. Hughes: It is my personal opinion that if you are going to vote on it today that putting the contract up on the screen does not really give residence sufficient time to digest the contract and ask intelligent questions based on that. But, having said that, I did pick up on a few things that I wanted to ask. How do you find and existing customer? Mayor Post: I guess the terminology for Mr. Esposito. The 1144 existing citizens is the number of customers who are paying a sewer bill to the Town of Milton. Mr. Hughes: Would the fees be based on consumption or flat rate? The reason I ask that is that it is just my wife and I in our house and a family of 8, 6, 4 or whatever, they would be consuming more water, waste water than a 2 or 1 person family. Mr. Patrick: Right now it's based on consumption. We've run our model using flat rates but that can be back calculated into the based on the consumption method essentially. The PCS would allow us to essentially design a tariff how it would best work, so we are open to either one but it would end up being the same overall amount for user fees, they would just have to be back calculated based on the constant fees we have assumed. I believe we looked at the average user in the Town of Milton paid about \$330 last year for sewer. Mr. Hughes: Also, can you explain the \$1500/EDU that's being allocated to the town exactly what that is for? If it is going to be a sewer impact fee and the town has no responsibility for the sewer, it is my understanding that impact fees have to be allocated for this specific capital expenditure therefore. Mr. Esposito: I believe for lack of a better phrase we are calling it a franchise fee. Mr. Hughes: So you are paying the franchise fee basically per the \$1500/unit. Mayor Post: The franchise fee is for doing business with the Town of Milton. Mr. Hughes: And also, I want to point out, that Mr. Collier pointed out, the current Charter says you are not allowed to have an exclusive franchise. While you may be revising that Charter, if you sign this agreement today, I believe technically you will be violating the current Charter with the expectation you will be revising it and grandfathering yourself in. Mayor Post: We are not saying, first of all, exclusive in this contract. We have a 4 month due-diligence period and we will consult legal advice and we are luckily right in the midst of almost finishing the revision of the new Charter and we will make sure the Charter is legally binding to what we do.

Public Hearing closed at 4:06

Special Meeting called to Order at 4:07pm

Additions/Corrections to Agenda: C. Dvornick makes motion to accept as presented. C. Prettyman seconds it. All in favor say "Aye". Opposed – None. MC

Resolution to approve negotiated contract with Tidewater Utility, Inc.: Regarding operations of waste water plant and infrastructure and use of the town controlled lands. Councilman Dvornick: "Is it appropriate to ask

questions at this time of the draft?" Mayor Post: "I think what we need is a motion for this resolution and a second and then we open it for discussion." Councilman Prettyman: "I think we should go through it, and table it for today and not make a motion or anything until we can go through and be able to speak on each one of these issues, because there are some things that I have found in there, and you are asking us to do something in less than 24 hours, and I don't think that is appropriate." Councilman Dvornick: "I kind of agree. I received a phone call yesterday and I picked it up first thing this morning and I've been reading through it and I have a couple of questions, but the way I'm used to contract negotiations is you do the due-diligence and then as a result you come up with a contract. So in this case we are agreeing to turn everything over to you and then there is a 4 month due-diligence period. I would have like more time to review it, because I think a lot of this stuff probably could have been answered with simple phone calls." Mayor Post: "And that is something that is kind of interesting because over the 4 month period nothing is set into stone until the finalization of that period." Councilman Dvornick: "Where in the contract does it say that, because that is one of the things that I was trying to find? Because once the contract is signed it's a legally binding contract. Is there an out clause?" Mayor Post: "Yes, there is an out clause." Bruce Patrick: "On the bottom of Page 12, at the beginning of Section 15, states 'this agreement has a 4month due-diligence period that will begin upon the date of signing. During this time period, the respective parties shall perform the following items and the agreement will be contingent on the items it's described'. There are other references to it." Councilman Dvornick: "The first thing I see as far as the 4 month period, the Town will annex the Sam Lucas Road development, so that is not an option, the property owner can't choose to seek annexation. That seems to be something the Town itself can't control." Mayor Post: "They've already sought annexation. C. Dvornick, I don't think you were present at the last council meeting; we were following now the Charter procedure for annexation on that parcel. That parcel has gone, has been through the PLUS review, and I appointed 3 members to review and report back to Planning and Zoning for recommendation so the process has begun for acquiring that parcel. I think what we need, if we are going to have a discussion is we need to make a motion for the resolution and a second to open it for discussion and then proceed." Councilman Dvornick: "Has John Brady reviewed this document? And what was his opinion of it?" George Dickerson: "Yes. He made changes in the areas that he felt relevant to protect the town and he said it was a good contract for the town, is what he related to me. And I have the resolution that he's prepared." Councilman Prettyman: "We as Council have not seen the changes that Mr. Brady has made." Mayor Post: "They are here. This is the final proposed contract." Councilman Prettyman: "Well, then if this is changes that Mr. Brady has made, I spoke to him after 4pm yesterday afternoon, and he had just gotten the draft." Mayor Post: "With the changes. Let me go on record, there were no changes made once you received this contract. We will proceed to read the Resolution and move forward whether we get a motion to proceed with the Resolution. And Mr. Brady had prepared this Resolution." George Dickerson: "As of this afternoon at 2:08pm, we received this fax from Mr. Brady. This is a resolution with regard to the topic here today." **G. Dickerson proceeds to read the Resolution in its entirety and a copy can be obtained in the Town Hall.** Mayor Post: "And I do want to go on record that you can pass a resolution the same day that it is written into record; that there's been many cases in the Town of Milton that has been performed and also, not like an ordinance where you require a first reading, public hearing and a second reading."

Councilwoman Melson made a motion to sign the resolution to approve the contract with Tidewater, Inc. to operate the Milton waste water treatment plant and to sell Tidewater the infrastructure as stated in the Resolution just read by the Town Manager; Councilman Dvornick seconds it.

Mayor Post: "Now we'll open for discussion." Councilman Prettyman: "I just don't understand why everything needs to be rushed through, pushed through, but I just think that it's time we need to take more time doing what we're doing and quit rushing through." Mayor Post: "I would certainly not want to say that it had been rushed through. We have spent countless nights negotiating this contract, numerous reviews by our Town Attorney and many hours have gone in to getting the best, even according to our own Town Solicitor the best contract

possible for the Town of Milton. And I don't quite understand how you can't, like I say you still have that 4 month due-diligence period which certainly have a lot to play at the end of the 4 months, even further, because as I quoted earlier here, I am very whole-heartedly about keeping the rates of the people of this town at a minimum, and as I said in the first five years, absolutely no increase. So it will be, when it comes to the end of this 4 month due-diligency part, coming back to the table, and if it means the public has an outcry, do we want to stop everything we have working on and really have it proceeded on for the last 4 or 5 years? Therefore, I think this is moving us into the next spectrum, and I am sure that the people of this town, especially what would be very helpful to have these presentations that Tidewater plans to make during this whole educational period, but there has been a lot of time put into this. Somehow we went from the street talk of millions of dollars that this was going to cost us to sitting here in reality of what this is being for the Town of Milton because we wanted to protect the people of this town. And yes, I do feel this has value to the towns' people and no, I was not going to sell them short. It's all about making a business deal that's going to make this town financially secure year after year." Councilman Dvornick: "Can we ask some questions? On the billing services in your definitions you are going to go to a monthly billing? I'd like the item identified as Exhibit A corrected so the title for Expansion Area and Growth Area are clearly identified, because that is very confusing for me. I would have like to have seen some information on how the build is going to be fixed for 5 years as calculated. I just happened to go back through 11 quarters of my bills, and I average \$48/quarter, which is \$16/month. It hardly seems reasonable to even send a bill out for it. But when I got to the increase in the 5 year at the \$12.50/quarter, it's a 29% increase after the 5 years. It would be nice if there was a schedule that could have illustrated that, I think that would have added a little clarity for myself." Mayor Post: "And we need to change also in the contract that item on Page 7 at the top it was previously discussed regarding Island Farms." Councilman Dvornick: "I would just like to see how you are actually going to calculate what my bills are going to, cause I'll compare that to what mine has been to make sure it's reasonable." Councilman Prettyman: "If the town is hit with a fine of \$10,000/day who will pay, Tidewater or the Town, because it is not clear at this point?" Mr. Esposito: "We are responsible for all plants that we own, the good and the bad that comes with it." C. Prettyman: "Is it lawful for the Town Council to contract away its taxation authority and grant the tax exempt status to private for profit?" Mayor Post: Our Town Solicitor reviewed it and left it in there. Councilman Prettyman: "Then should we wait to hear from Mr. Brady again, because as I say, we are reading this for first time and these are some of the questions that I have?" Mayor Post: "What we can do with the contract with the amendment as proposed and we will check and obviously we are not going to do anything, obviously the law supercedes the contract."

Councilwoman Melson made a motion to enter into a contract with the Town of Milton with Tidewater Environmental Services, Inc. for the waste water services; Councilman Frey seconds it. Roll call vote. Councilman Frey "Yes"; Councilman Harris "Yes", Councilman Dvornick "Abstain"; Councilman Prettyman "Abstain"; Councilwoman Melson "Yes"; Councilwoman Betts "Recluse myself"; and Mayor Post "Yes". Motion carried.

Councilman Dvornick made a motion to adjourn; Councilman Prettyman seconds it. All in favor say "Aye". Motion carried.

Meeting Adjourned at 4:28pm

Respectfully Submitted,

Julie Powers
Executive Secretary